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# CONVERTIBLE LOAN AGREEMENT TEMPLATE

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SZABLON DOKUMENTU

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# TEMPLATE CONVERTIBLE LOAN AGREEMENT

(“Agreement”)

On this \_\_\_\_\_ day of \_\_\_\_\_ (the “Effective Date”)

\_\_\_\_\_ (the “Investor”),

and

\_\_\_\_\_, a limited liability company (*spółka z ograniczoną odpowiedzialnością*) with its registered office in \_\_\_\_\_, entered into the National Court Register maintained by the District Court of \_\_\_\_\_, \_\_\_\_\_ Commercial Division of the National Court Register under No \_\_\_\_\_, holding tax identification No (NIP) \_\_\_\_\_, share capital \_\_\_\_\_ PLN, represented by \_\_\_\_\_ (the “Company”),

The Investor and the Company hereinafter referred to as the “Parties” have entered into the following agreement.

## Recitals

### WHEREAS:

- The Company intends to increase the share capital of the Company by issuance of the new shares;
- The Company is seeking funding for the development of the Company, and in particular on \_\_\_\_\_;
- The Investor is potentially interested in investing into the Company and taking up shares in the increased share capital of the Company;
- The Company hereby represents and warrants to the Investor that:
  - i. the Company has, in all material aspects, complied with the applicable legislation regulating its business;
  - ii. the execution and performance of the Agreement does not breach any contract or obligation to which the Company is a party, does not prevent the execution of any other contract to which the Company is a party, does not infringe upon any administrative decision or a decision or judgment by a court or tribunal of arbitration that are binding on the Company;
  - iii. there are no pending, ongoing and/or, imminent claims, disputes, litigations, arbitration, investigations and/or actions, suits or proceedings in respect of any of the Company which could have the effect of preventing, delaying or otherwise interfering with obligations resulting from Agreement;
  - iv. the Company has not been declared bankrupt and no motion to initiate insolvency and/or liquidation proceedings has been filed in respect of any of the Company, nor is any such

- motion imminent, nor are bankruptcy or composition proceedings (as provided for by the previous legal regime) pending;
- v. the Company is not insolvent and is able to meet its financial obligations as they fall due; it has not stopped paying its debts as they fall due within the meaning of applicable insolvency law;
  - vi. no resolution has been passed for the winding up of the Company and no meeting has been convened at which such a resolution is proposed;
  - vii. the Company is not a party to any court proceedings, either as claimant or as defendant, nor is it a party to any enforcement proceedings; and
  - viii. there are no approvals or consents from public, governmental and/or administrative authorities necessary for the authorization of the execution and implementation of the Agreement.

NOW, THEREFORE, in consideration of the recitals, and of the terms, covenants, and conditions set forth or referred to herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Investor and the Company mutually agree as follows:

## § 1

### Subject of the Agreement

1. On the terms and conditions set forth hereunder, the Investor shall grant to the Company a loan of *PLN/USD/EUR* \_\_\_\_\_ (\_\_\_\_\_) (the “**Loan**”).
2. The Loan shall be paid to the bank account of the Company \_\_\_\_\_ no later than \_\_\_\_\_.
3. The Loan shall bear interest of [ ] % annually. The interest shall be accrued on the amounts paid to the Company, from the day on which the Loan or its given tranche is transferred to the bank account of the Company to the date of repayment of the Loan or the date of adopting by the General Meeting of the Company of a resolution on issuing the New Investor Shares pursuant to Section 3 hereof.
4. The Loan shall be granted for definite period of \_\_\_\_\_ year(s) from the date of this Agreement and shall become payable in whole, along with interest accrued pursuant to Section 1.3 hereof, on the date of:
  - a. approval of the Investor of the future share register of the Company (e.g. entities participating in the financial round on the basis which the Company will issue the New Investor Shares pursuant to Section 3 hereof);
  - b. adoption by the General Meeting of the Company of a resolution on issuing the New Investor Shares pursuant to Section 3 hereof;
  - c. termination of the Loan by the Investor, pursuant to Section 2 hereof.

## § 2

### Repayment of the Loan

1. The Parties agree that subject to Section 2.2-2.6 below, the repayment of the Loan shall be effected by contractual set off of all payable receivables of the Investor towards the Company with respect to the repayment of the Loan along with accrued interest against payable receivables of the Company towards the Investor with respect to payment for the subscribed New Investor Shares, issued pursuant to Section 3 hereof, unless the Investor serves the Company with the statement on non-participating in subscription of the New Investors Shares \_\_\_\_\_ days prior to the date of the General Shareholders Meeting . The Investor's statement should include justification of its decision (e.g. non-performance or misperformance by the Company of the business plan or the KPI's as set forth in Attachment 1 of the Agreement or non-approval of the other entities interested in the participation in the financial round). In order to effect the set off, immediately after subscribing by the Investor for the New Investor Shares the Company and the Investor shall enter into appropriate set-off agreement.
  
2. In the event of:
  - a. non-performance or misperformance by the Company of the obligation to offer the New Investor Shares to the Investor pursuant to Section 3.2 hereof;
  - b. non-performance or misperformance by the Company of other material obligations hereunder, in particular the obligation to assure that the General Meeting of the Company adopts resolution on increase of the share capital of the Company pursuant to Section 3 hereunder,
  - c. the Investor serving the Company with a written statement on non-participating in the in subscription of the New Investors Shares,the Investor (and in the event described in (b) above – also the Company) shall have the right to terminate the Loan upon written notice to the Company (and in the event described in (b) above – upon written notice of the Company to the Investor). In such case the Company shall be obliged to repay the Loan along with accrued interest within 30 (thirty) days following the receipt of such termination notice by the Company or the Investor, as the case may be.
  
3. Notwithstanding with the above the Company will provide the Investor with the opportunity to complete a financial and legal due diligence of the Company within \_\_\_\_\_ days from this Agreement, in the scope which might have a direct or indirect impact on pay and timely repayment of the Loan and/or the future investment of the Investor into the Company.
  
4. Notwithstanding the above the Company is obliged to provide the Investor with all information requested by them and to provide the following information by its own accord (such information to include information on a consolidated basis if applicable):
  - i. unaudited annual financial statement within 120 days after the end of the respective financial year;
  - ii. unaudited monthly management accounts within ten days after the end of the respective month, including relevant KPI, cash flow statement and sales figures in the Company's usual format or as otherwise reasonably requested by Investor;
  
5. Without prejudice to the foregoing provisions, the Company shall be required to keep the Investor fully informed, as soon as reasonably practicable, of all material matters of which it is or they have become aware relating to the progress of the business from time to time carried on by the

Company and shall provide the Investor or their duly authorized representatives or agents with access during normal office hours.

6. Investor shall have the right to terminate this Agreement at any time if the information provided by the Company on the basis of Sections 2.4-2.5 will be unsatisfactory to the Investor.
7. In the case set forth in Section 2.6, the Investor shall send a written statement of withdrawal from the Agreement that results in the Company's obligation to return the Loan in full along with and the interest calculated up to the date described in Section 1.4 within 30 (thirty) days from the date of such declaration by the Investor.
8. In the event that the Loan is not repaid by contractual set off of all payable receivables of the Investor towards the Company with respect to the repayment of the Loan along with accrued interest against payable receivables of the Company towards the Investor with respect to payment for the subscribed New Investor Shares, issued pursuant to Section 3 hereof, the Investor shall have the right to terminate the agreement upon written notice and the Company shall be obliged to repay the Loan within 30 (thirty) days following the receipt of such termination notice by the Company.

### **§ 3**

#### **New Investor Shares**

1. The Investor shall have the right to subscribe to preferred shares in the increased share capital of the Company (the "New Investor Shares"), in the aggregate amount and for the price (the "Investor's Issuance Price") set forth pursuant to this Section 3 and terms and conditions of the shares issuance as set forth in the appropriate resolution of the General Meeting of the Company. The above mentioned share preference shall be based on but not limited to *[to be determined with the Company, Founders and/or other Investors]*: (i) voting preference, (ii) dividend distribution, (iii) participation in the distribution of the company's assets in the event of its liquidation, (iv) personal rights of the Investor to appoint and dismiss a Board/Management Board member(s), (v) consent of the Investor for certain activities beyond the ordinary management of the company (veto rights) or change of the articles of association; (vi) right of first refusal, (vii) drag along, (viii) tag along, (ix) anti-dilution protection.
2. The aggregate Investor's Issuance Price shall equal the amount of the Loan along with accrued interest, calculated pursuant to Section 1.3 hereof, and the number of the New Investor Shares shall be calculated as follows:

$$X = Y/Z$$
$$PIn = PLN [PRICE]$$

where:

**X** – the amount of the New Investor Shares (rounded up to one share);

**Y**– the amount of the Loan along with accrued interest, calculated pursuant to Section 1.3 hereof;

**Z** – the Investor's Issuance Price for one New Investor Share, equal to PLN \_\_\_\_\_ (\_\_\_\_\_);

or

In the event the Company issues new shares on or before \_\_\_\_\_ in that certain financing in which the Company raises at least \_\_\_\_\_ [or: the post money valuation of the Company is \_\_\_\_\_] including set off of the Loan, then the outstanding principal balance of this Agreement along with the interest can be set off by the Company and the Investor at a conversion price per share to \_\_\_% of the price per share paid by other investors taking up the shares of the Company. The number of the New Investor Shares shall be calculated as follows:

$$X = Y/(Z*0,___)$$

where:

**X** – the amount of the New Investor Shares (rounded up to one share);

**Y**– the amount of the Loan along with accrued interest, calculated pursuant to Section 1.3 hereof;

**Z** – the Issuance Price for one New Share in the financing round.

3. Subject to approval of the General Meeting of Shareholders, the New Investor Shares shall be preferred as described in Section 3.1 above.
4. Subject to adoption by the General Meeting of resolutions on increase of the share capital in accordance with this Section 3 and amending the Company's Statute pursuant to Section 3.3 above, the Parties shall undertake all actions and make all statements necessary for proper performance of this Agreement, and in particular:
  - i. The Company undertakes to (i) convene the General Meeting of the Company for the date not later than \_\_\_\_\_, with the agenda containing the increase of the share capital in accordance with this Section 3 and amending the Company's Articles of Association pursuant to Section 3.3 above, (ii) offer all New Investor Shares to the Investor in accordance with Section 3.2; (iii) enter into contractual set off agreement pursuant to Section 2.1; (iv) make all actions necessary for proper registration of the share capital increase in accordance with this Section 3 and amendments to the Company's Statute pursuant to Section 3.3, handling New Investor Shares to the Investor and registering the Investor in the share register of the Company and (v) sign with the Investor and the other Shareholders Investment and Shareholders Agreement;
  - ii. The Investor undertakes to (i) enter into subscription agreement/declaration on subscribing for all New Investor Shares in accordance with Section 3 hereof, (ii) enter into contractual set off agreement pursuant to Section 2.1 and (iii) \_\_\_\_\_, unless the Investor serves the Company with a written statement on non-participating in the subscription of the New Investors Shares.

#### **§ 4**

#### **Use of the Loan**

The Loan will be in its entirety utilized by the Company to realize the business plan as set forth in Appendix 1 to the Agreement.

**§ 5  
Notifications**

1. The Parties consider that the notification is duly served, depending on the approved form of serving (unless this Agreement stipulates otherwise):
  - a. At the moment of personal service (directly to the addressee or to the person who collects the deliveries in the standard operation of the Party);
  - b. At the moment of confirming the acceptance or refusal to accept the delivery from the courier (by the addressee or the individual who collects the deliveries in the standard operation of the Party);
  - c. At the moment of confirming the acceptance or refusal to accept a registered mail (by the addressee or the individual who collects the deliveries in standard operation of the Party);
  - d. On the expiry date for the second non-delivery notice (*awizo*) for a registered mail;
  - e. At the moment when the email is recorded on the server of the addressee; however, if the day of receipt is not a working day, or if the email is received after 18.00 on a working day, it is considered to have been received on the next working day at 12.00.
  
2. The Parties agree on the following contact persons and correspondence addresses:
  - a. Investor \_\_\_\_\_,
  - b. Company: \_\_\_\_\_.



**§ 6  
Final Provisions**

1. All disputes arising between the Parties arising in connection with performance of this Agreement shall be solved by good faith negotiation or mediation between the Parties. In the event of failure of such negotiation or mediation, such dispute shall be submitted and finally resolved by a common court competent for the seat of the *Investor/Company*.
2. Each Party undertakes to keep all information with respect to the contents and performance of this Agreement (the "**Confidential Information**") strictly confidential. The above obligation shall not apply to information which (i) have been made available to the public without infringement of this Agreement; (ii) is known to the Party from other sources without obligation to keep it confidential and without infringement of this Agreement; (iii) are made available to the public upon prior written consent of the other Party. The confidentiality obligation set forth herein shall not disturb either Party to give information to authorized bodies, shareholders of the Company, and to make information available to the public pursuant to the general provisions of the law, as well as shall not disturb either Party to make general information of the Company's actions available to the public. Each party may disclose the Confidential Information to their respective advisors and contractors, provided that such disclosure is necessary for proper performance of this Agreement and provided further that such persons are bound with appropriate confidentiality obligation. This confidentiality obligation shall remain valid for 1 (one) year following the expiry of this Agreement.
3. All notices and other information to be made or handled hereunder shall be made in writing under pain of nullity, with signature of the Party or a person representing the Party. All such notices shall be delivered in person, by registered mail or courier to the addresses indicated in the Preamble of this Agreement. Each Party may change its address from time to time, subject to proper notification to other Party the above, otherwise the deliveries made to the previous address shall be deemed valid and effective.
4. The costs of tax on civil transaction (*podatek od czynności cywilnoprawnych*), if any, on granting the Loan shall be borne by the Company.
5. The Agreement shall be governed by and interpreted pursuant to the Polish law. In all matters not covered by this Agreement the provisions of the Polish Civil Code and other relevant Polish law provisions shall apply.
6. All amendments and supplements to this Agreement shall not be valid unless made in writing.
7. Notwithstanding the foregoing, the Investor may not assign, pledge, or otherwise transfer this Agreement without the prior written consent of the Company, except for transfers to affiliates.
8. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid and/or unenforceable under applicable law, the remainder of this Agreement shall remain in full force and effect. The Parties shall negotiate in good faith to modify this Agreement so as to give effect to the original intent of the Parties as closely as possible in an acceptable manner.

9. This agreement was executed in 2 (two) copies, one copy for each Party.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the [*date of the Agreement*].

**On behalf of the Company:**

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**On behalf of the Investor:**

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